

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Ariel D.,¹

Civ. No. 22-3030 (JWB/DJF)

Plaintiff,

v.

Kilolo Kijakazi, *Acting Commissioner of
the Social Security Administration*,

**ORDER ACCEPTING
REPORT AND RECOMMENDATION
OF MAGISTRATE JUDGE**

Defendant.

Bryan Konoski, Esq., Konoski & Partners, P.C.; James H. Greeman, Esq., Greeman Toomey, counsel for Plaintiff.

Ana H. Voss, Esq., United States Attorney's Office; Angela Thornton-Millard, Esq., James D. Sides, Esq., and Sophie Doroba, Esq., Social Security Administration, counsel for Defendant.

United States Magistrate Judge Dulce J. Foster issued a Report and Recommendation ("R&R") on November 13, 2023. (Doc. No. 19.) No objections have been filed to that R&R in the time permitted. In the absence of timely objections, the R&R is reviewed for clear error. *See* Fed. R. Civ. P. 72(b); *Grinder v. Gammon*, 73 F.3d 793, 795 (8th Cir. 1996). Having reviewed the R&R, no clear error is found.

Based on the R&R of the Magistrate Judge, and on all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. The November 13, 2023 R&R (Doc. No. 19) is **ACCEPTED**;

¹ This District has adopted the policy of using only the first name and last initial of any nongovernmental parties in social security appeals. Accordingly, where referring to the Plaintiff, only her first name and last initial are provided.

2. Plaintiff's Request for Relief (Doc. No. 12) is **GRANTED**;
3. Defendant's Motion for Summary Judgment (Doc. No. 16) is **DENIED**;
4. The Commissioner's final decision is vacated; and
5. This case is **REMANDED** to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g), for further administrative proceedings consistent with the R&R. As stated in the R&R, "[o]n remand the ALJ should: (1) create a logical bridge showing how he considered or resolved the material inconsistencies in the case record to support his decision not to include an absenteeism limitation in Plaintiff's RFC; and (2) recall a vocational expert for testimony to the extent necessary to address a new hypothetical based on any modified RFC." (Doc. No. 19 at 12–13.)

LET JUDGMENT BE ENTERED ACCORDINGLY.

Date: December 12, 2023

s/ Jerry W. Blackwell
JERRY W. BLACKWELL
United States District Judge